

Q&A: New rules on automatic cross-border recognition of adoptions?

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To protect adopted children's best interests, MEPs want the EU Commission to require all EU countries to recognise each other's adoption certificates automatically. Their draft resolution proposes a European Certificate of Adoption to speed up automatic recognition process. The debate and vote will take place on Thursday.

In this background note you will find more information on the topic.

Vote: Thursday, 2 February

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Background

What does the resolution entail?

The resolution urges the Commission to put forward rules on automatic EU-wide recognition of “domestic” adoptions, i.e. cases where the adopters and the adopted child are resident in one country. It also proposes creating a European Certificate of Adoption to speed up the automatic recognition process. As European families may have lived outside the EU in the past, the resolution also recommends that once one member state has recognised an adoption order issued outside the EU, all EU countries should automatically recognise that order.

Currently, there is no binding international or European legal framework for the recognition of adoption in cases where the parents and the adopted child come from one country, i.e. “domestic” adoptions. While the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption requires automatic recognition of adoptions in all the signatory countries, including all EU member states, it only concerns situations in which the parents and the adopted child are resident in two different countries.

As legislation currently stands, there is no legal guarantee that “domestic” adoptions carried out in one EU member state will be recognised in another. Families with adopted children from their own country still face legal and administrative hurdles when moving from one EU member state to another.

The resolution also calls for common minimum standards to be drawn up for adoption, not in the form of legislation but rather to define “best practice” guidelines.

Background

What obstacles do families with adopted children face?

In many cases, families with adopted children who move to another EU country do not face legal problems, as some EU member states already automatically recognise “domestic” adoptions. However, in other member states, differing rules may harm children’s rights, including their right to family life, non-discrimination, inheritance rights and right to nationality. Differing rules may also have an impact on the ability and willingness of adopters to exercise their rights of free movement.

Yet families with adopted children from their own country do face various practical obstacles. When moving from one EU member state to another, the parents may have to take additional legal or administrative steps to establish custody and parental responsibility in order to arrange for the education or medical treatment of their adopted child. Parents and their adopted children may also face difficulties in claiming welfare benefits or tax exemptions and deductions related to the parent/child relationship.

Furthermore, if one or both parents of the children have a nationality other than that of the country where the adoption order was issued, the adopted children may have difficulties in claiming that nationality. Adopted children may also face obstacles to inheriting land/property in another EU member state, not just from their parents, but from members of their extended families.

Background

How does the resolution deal with adoption by registered couples?

EU countries have differing legislation on the legal right of same-sex couples to adopt. Automatic recognition of adoption orders may therefore give rise to situations where a member state is required to recognise an adoption by adopters who would not, under the law of the recognising member state, have had the right to adopt.

However, this resolution only concerns the individual parent-child relationship. So it does not oblige member states to recognise any particular legal relationship between the parents of an adopted child.

Furthermore, the resolution requires that the recognition of an adoption must not be manifestly contrary to the public order of the recognising member state.

Same-sex couple adoption in the EU

According to [a study by the European Parliamentary Research Service](#), full joint adoption by same-sex couples is legal in 12 EU countries: Belgium, Denmark, Finland (effective March 2017), France, Ireland, Luxembourg, Malta, the Netherlands, Portugal (legislation passed after the study was published), Spain, Sweden and the UK.

Austria, Germany, Estonia and Slovenia, permit step-child adoption in which the partner in a registered partnership may adopt the child of his or her partner. Croatia allows registered and unregistered life partners to become partner-guardians of their partner's child.

Background

Legislative process

November 2016: Legal Affairs Committee approves the draft text by 21 votes to two, with no abstentions.

February 2017: draft proposal to be put to a vote by Parliament as a whole using the “legislative initiative” procedure, which requires an absolute majority.

This resolution calls for a legislative initiative, which means that if approved, the Commission must state its reasons if it refuses.